IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5524 of 2007()

CRIME NO.230/07 OF PATTANAKKAD POLICE STATION

APPLICANT/ACCUSED:

M. MOOSAKKUTTY, AGED 71 YEARS,
S/O. MUHAMMED, KHADER BHAVAN, PADINJATTUMKARA,
VADAKKUMMURI, KUTHIYATHODE VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT - STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5524 of 2007

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Dated this the 19th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner, a person aged about 72 years, is an authorised wholesale dealer appointed under the Kerala Rationing Order. The crux of the allegations against him is that a lorry load of wheat was illicitly transferred from his godown to a lorry, which was parked in front of his shop. Some duty conscious citizen allegedly conveyed the information to the officials over telephone. When the officials reached the scene, it was found that the lorry with 150 bags of wheat was parked in front of the shop of the petitioner/AWD. The driver was also available in the vehicle, it is clearly indicated. The official went to the godown of the AWD and made an attempt to verify the stock. The officials found that the wheat there is in excess of what should have been available in the godown. The lorry was detained. Report is made to the District Collector. All these happens on 20.8.2007. The District Collector, ultimately, by letter dt. 23.8.07 directed the Circle Inspector of Police, Kuthiyathode to take necessary action. The

Circle Inspector by endorsement dt. 1.9.07 sent the petition over to the local Sub Inspector. The crime is at long last registered on 3.9.2007 at Pattanakkad police station. Investigation is in progress. The petitioner apprehends imminent arrest. He has therefore come to this Court on 7.9.2007 with this application for anticipatory bail.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He is an absentee Dealer. He does not actually do the business himself. He has persons employed by him to help and assist him in the conduct of the business. He is not aware of what happens day-today in the shop. The learned counsel further submits that at the moment there is absolutely nothing to show that the wheat bags found loaded in the lorry did actually come from the stock of the petitioner. The petitioner had excess stock and in these circumstances it cannot be lightly assumed that the bags in the lorry did come out of the stock of the AWD. The petitioner submits that even if the allegations were accepted that there was about 29 quintals of excess wheat in the godown, that cannot link him or place any responsibility on him for the load found available in the vehicle. In these circumstances the learned counsel for the petitioner submits that

anticipatory bail may be granted to the petitioner. The petitioner may not be compelled to endure the undeserved trauma of arrest and detention.

3. The learned Prosecutor opposes the application. The case diary was placed before me as requested. The case diary shows that only an apology of an investigation has been conducted so far. The driver of the vehicle has not been questioned so far. No person, who loaded or helped in the loading of the wheat bags in the lorry, has so far been questioned. No satisfactory explanation is offered as to why such elementary and preliminary requirements have not been satisfied. I pity the duty conscious citizen, who alertly informed the officials about the dubious activity that was going on in the AWD. Such alert response from him is invited the despicable quality of investigation on the part of the Investigating Officer. The learned Prosecutor submits that crime was registered only on 3.9.2007 though the offence was conducted on 20.8.2007 and therefore the Investigating Officer may not be found fault with.

4. It appears to me that the petitioner claims and even the police want this court to grant anticipatory bail to the petitioner. But I must alertly be conscious of the nature, quality and contours of jurisdiction of this Court under Section 438 Cr.P.C. The offences alleged are admittedly non-

bailable offences. Under Section 438 Cr.P.C. superior courts have the discretion in an appropriate case to issue directions, which would virtually convert the non-bailable offences into bailable offences, subject to conditions which the court may impose. Such jurisdiction is not to be invoked as a matter of course. Only when the court is satisfied prima facie about the justice in such invocation of powers can the court resort to such invocation of powers. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I do take note of the fact that action was initiated on the basis of the call received from a duty conscious citizen of the illicit activity of transferring stock from the AWD. I take note of the fact that unexplained presence of 150 bags of wheat in a lorry consistent with the information received by the official was there in front of the shop of the petitioner. I take note of the further fact that the petitioner does not explain the presence of such lorry with wheat bags in front of his shop. Suffice it to say, I am satisfied that this is not a fit case where the extra ordinary equitable discretion vested in this court under Section 438 Cr.P.C. can or ought to be invoked.

5. It would be abdication of duty not to comment on the quality of investigation which is revealed from the case diary placed before me. I need only say that I expect better quality of investigation in cases like this on the part of the Investigators.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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